WP(C) 1241/2007
BEFORE
THE HON'BLE MR JUSTICE B.K. SHARMA

I have heard Mr. A.K. Goswami, learned Sr. counsel assisted by Mr. P. Sharma, learned counsel for the petitioner in W.P.(C) No. 1241/07. I have also heard Mr. B. Chokraborty, learned counsel for the petitioner in W.P.(C) No. 1256/07. After service of notice on the respondents NO. 3, 4 and 5, Mr. A. M. Majumdar, learned Sr. counsel assisted by Mr. S. Islam, learned counsel has entered appearance on behalf of the respondents No. 3, 4 and 5. I have also heard Mr. A.M. Majumdar, learned Sr. counsel. Mr. M.U. Mandal, learned counsel appearing for the respondent No. 6 has made his submission. Mr. M.K. Choudhury, learned Sr. S.C., Education Department assisted by Mr. S.K. Das, learned S.C., Education Department has made his submission for the official respondents. Mr. Das has also produced the records pertaining to the case.

As agreed to by the learned counsel for the parties, these two analogous writ petitions have been heard together and are being disposed of by this common order. During the course of hearing, learned counsel for the parties could not produce any more materials so as to take different view other than one taken in passing the interim order dated 15.03.07. The stay order dated 18.09.06 operating in W.P.(C) No. 4852/06 has been mentioned in the interim order. As per the said interim order, the college authority was debarred from taking any action in respect of the selection for the post of Principal. However, the college authority not only conducted the selection, but also sent the proposal for appointment of the respondent No. 6 to the Director of Higher Secondary, Assam. In turn, the Director of Higher Education, Assam has granted the necessary approval for appointment of the respondent No. 6 as Principal of the college. All these have been done during the operation of the stay order dated 27.09.06 in W.P.(C) No. 4852/06. In that view of the matter, the impugned orders are not sustainable.

The interim order passed by the Division Bench in Writ Appeal No. 261/06 has also been mentioned in the interim order dated 15.03.07. The interim order was passed on 31.07.06 and in view of such stay order, the college authority could not have acted upon the select list prepared by the State Selection Board. However, the college authority inspite of the stay order of the Division Bench, proceeded with the matter and eventually after the final judgement and order dated 15.02.07 passed in the Writ Appeal, the Director of Higher Education passed the impugned order dated 09.03.07 followed by the impugned order dated 10.03.07 passed by the President of the Governing Body of the college. The impugned orders have been passed purportedly on the strength of the final order passed on 15.02.07 by the Division Bench in the aforesaid Writ Appeal.

One interesting feature which has come to the notice of the Court is that the college authority by filing Misc. case No. 830/07 in W.P.(C) No. 4852/06 had prayed for vacating the interim order dated 27.09.06 passed in the writ petition. On perusal of the application, it appears hat the college authority in fact, relied upon the final judgment and order dated 15.02.07 passed in W.A. No. 261/06. Placing reliance on the said judgment, it was contended that in view of the final order passed by the Division Bench, the interim order passed by the learned Single Judge in the writ petition is required to be vacated. The Misc. application was taken up for hearing on 09.03.07 by the learned Single Judge. However, the learned counsel appearing for the respondents/applicants desired for early hearing of the writ petition instead of pressing the Misc. application. Accordingly the learned Single Judge by order dated 09.03.07 recording such submission of the learned counsel for the applicants, fixed the writ petition for hearing on 20.03.07. Thus the college authority is aware of the interim order passed by the learned Single Judge as well as the final judgment and order passed by the Division Bench in W.A. Because of the final judgment passed by the Division Bench, the Misc. case No. 830/07 was filed by the college authority praying for vacating the interim order. However, the application was not pressed and thus, the interim order passed by the learned Single Judge was also not vacated and is still operating.

Inspite of the aforesaid position, the respondents passed the impugned orders dated 09.03.07 and 10.03.07. Be it stated here that the impugned order dated 10.03.07 has been passed by the President of the Governing Body of the College who had filed the Misc. Case No. 830/07 for vacating the stay order passed by the learned Single Judge. This is really a matter of grave concern. The respondents have tried to overreach the order of this Court.

In view of the above and for the reasons assigned in the interim order dated 15.03.07, the impugned orders dated 09.03.07 and 10.03.07 passed by the Director of Higher Education, Assam and the President of the Governing Body of Nalbari College respectively are set aside and quashed.

The writ petitions are allowed. There shall be no order as to costs.